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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,138	06/25/2003	Vetrivel Ayyavu	03-0289	3430

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07/07/2005

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EXAMINER

TRUJILLO, JAMES K

ART UNIT

PAPER NUMBER

2116

DATE MAILED: 07/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/606,138

Applicant(s)

AYYAVU ET AL.

Examiner

James K. Trujillo

Art Unit

2116

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 June 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.

12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). 06082005

13. ☐ Other: _____.


LYNNE H. BROWNE

**SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100**

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments filed 24 June 2005 have been fully considered but they are not persuasive.

Applicants argue in substance that there a prima facie case of obviousness has not been established because the references do not supply desirability of modification. The examiner disagrees. Applicants are directed to the final rejection which reference Cortopassi at col. 2, lines 28-36. Cortopassi provides motivation in that by entering a low-power state a device will conserve power.

Applicant also argues in substance that Cortopassi as hardware may not issue a request to a physical layer as recited in claim 5 since the request may be issued by software. The examiner disagrees. Applicants point out that Cortopassi uses a system controller to issue a request. As is well known in the art a system controller is a hardware device. Thus, the element is taught by Cortopassi. Furthermore, this argument was not presented in the response to the non-final action and thus the rejection does not appear to be timely challenged.

Applicants also argue in substance that it would have not been obvious to one of ordinary skill in the art to further modify AAPA and Cortopassi to change the first power savings mode a Slumber mode. The examiner disagrees. The combination of AAPA and Cortopassi disclose using a Slumber mode, however just not as a "first power mode". One of ordinary skill in the art would recognize that power modes are exchangeable. This would be the case as when greater power reduction is desired which is the motivation used in the rejection. Specifically, it would have been obvious to one of ordinary skill in the art to modify the teachings AAPA and Cortopassi in order to futher reduce power as the Slumber power state would reduce power consumption in a first power state. Clearly, merely changing the order of power modes or substituting one power mode for another is an obvious modification. The examiner is using "Offical Notice" only to fill in the gaps in an insubstantial manner since the prior already teaches the recited power modes. Therefore, it is believed that an affidavit as requested by the applicants is not required as it is clear that personal knowledge is not the basis for the rejection, but a mere insubstantial filling in of a gap. Furthermore, this argument was not presented in the response to the non-final action and thus rejection does not appear to be timely challenged.